



New Jersey Department of Children and Families Policy Manual

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SUBJECT: Procedural Safeguards: Parental Consent, Notice, Participation, Meetings, and Native Language

EFFECTIVE DATE: June 30, 1990

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A. OBJECTIVE:

To ensure that eligible State Facility Education Act (SFEA) students and State Responsible students, for whom the Department of Children and Families (DCF) Office of Education (OOE) is responsible for Child Study Team (CST) services, are provided procedural safeguards concerning parental consent, notice, participation, meetings and native language.

B. DEFINITION:

“Parent” means the natural or adoptive parent, the legal guardian, an educational surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2, and an adult student.

“Student” means a student with a disability or a student who may have a disability and has been referred for an initial evaluation to determine eligibility for special education programs and services.

C. STANDARDS:

1. As outlined in N.J.A.C. 6A:14-2.3, all reasonable efforts shall be made to seek parental participation in the educational process for eligible students with disabilities.
2. Consent shall be obtained from the parent pursuant to N.J.A.C. 6A:14-2.3 (a) through (e).
3. Written notice shall be provided to the parent in accordance with N.J.A.C. 6A:14-2.3 whenever designated school and/or CST personnel propose or decline to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.
4. Meetings to determine eligibility and to develop an Individualized Education Program (IEP) shall be held in adherence with N.J.A.C. 6A:14-2.3 (k).
5. Written notice to the parent shall be provided and parent conferences shall be conducted in the language used for communication by the parent and student unless it is not feasible to do so pursuant to N.J.A.C. 6A:14-2.4.
6. The *Supervisors of Educational Programs/Child Study Team Case Managers Letters and Forms Manual* (SEP/CST Manual) provides specific procedures, letters and forms to ensure implementation of the procedural safeguards outlined in this policy.

D. PROCEDURES:

1. In addition to those occasions required by regulation and/or statute, the Education Supervisor (ES) or Child Study Team (CST) Case Manager shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6A:14), student records rules (N.J.A.C. 6A:32-7), and/or low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A) upon the request of a parent.
2. Beginning at least three years before a student reaches the age of 18 years (which means the year in which a 14 year old student turns 15), the student's IEP shall include a statement that the student and the parent have been informed of the rights under N.J.A.C. 6A:14 that will transfer to the student on reaching the age of majority.
3. Except when a parent has obtained legal guardianship, all rights under N.J.A.C. 6A:14 shall transfer to the student upon attainment of the 18th birthday.
 - a. The ES or CST Case Manager shall provide the adult student and the parent with written notice that the rights under N.J.A.C. 6A:14 have transferred to the adult student, utilizing the letter in the SEP/CST Manual.

- b. The adult student shall be given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A) and the procedural safeguards statement published by the Department of Education.
- c. An adult student shall participate in meetings and shall be given notice according to the requirements of this policy and N.J.A.C. 6A:14-2.3.
- d. The adult student may invite the parent to participate in meetings regarding the identification, evaluation, classification, or educational placement of the adult student or the provision of a free, appropriate public education to the adult student.
- e. The designated school or CST personnel shall copy the parent of the adult student on meeting invitation letters, in accordance with the SEP/CST Manual.
- f. The ES or CST Case Manager shall provide any notice, required by N.J.A.C. 6A:14, to the adult student and to the parent in accordance with the SEP/CST Manual.
- g. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education program and related services, or for the release of records of an adult student shall be obtained from the adult student.
- h. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to the adult student, the adult student may request mediation or a due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.

4. Written Parental Consent

- a. Written parental consent shall be obtained:
 - 1) Prior to conducting any assessment as part of an initial evaluation;
 - 2) Prior to implementation of the initial IEP resulting from a.(1) above;
 - 3) Prior to conducting any assessment as part of a reevaluation, except that such consent is not required, if it can be demonstrated that reasonable measures were taken to obtain such consent and the parent failed to respond;
 - a) A staff person has taken reasonable measures if he or she has made two documented attempts to obtain written consent from the parent.

- b) The school shall maintain a record of its attempts to obtain the written consent from the parent, including, but not limited to, detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of any visits made to the parent's home or place of employment, as feasible, and the results of those visits.
- 4) Prior to the release of student records according to N.J.A.C. 6A:32-7 and OOE Policy #4;
- 5) Each time the OOE seeks to access private insurance covering a student with a disability [This situation rarely occurs and requires the approval of the appropriate Regional Administrator.];
- 6) Whenever a member of the IEP team is formally excused from participating in a meeting pursuant to determining eligibility and developing an IEP;
- 7) Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and
- 8) Whenever a parent and the OOE CST Case Manager agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).
- b. Written consent for an initial evaluation shall be obtained from the student's parent with the following exceptions:
 - 1) If the parent cannot be identified, if the parent cannot be found after reasonable efforts, or if a student is under the guardianship of an agency of the State of New Jersey and parental rights have been terminated pursuant to an order of a court of competent jurisdiction, the ES or CST Case Manager shall obtain written consent from the individual who has been appointed to act as the educational surrogate parent for the student.
 - 2) If the rights of a student's parent have been subrogated for purposes of consenting to eligibility by a court of competent jurisdiction, the ES or CST Case Manager shall obtain written consent for an initial evaluation from the individual the court has appointed on the court order.
- c. When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized, and the OOE may not seek to compel consent through a due process hearing.
 - 1) However, if a parent refuses special education and related services on behalf of a student, the OOE shall not be determined to have denied the student a free, appropriate public education because the student failed to

receive necessary special education and related services nor shall the OOE be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP.

- 2) When seeking consent prior to conducting any assessment as part of an initial evaluation or reevaluation and prior to the release of student records, the OOE may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent, if the parent refuses to provide consent and the OOE/ES/CST Case Manager and the parent have not agreed to other action.
- d. When consent is received, the action for which consent was granted shall be implemented without delay.
- e. After providing consent for the implementation of services, the parent may revoke, in writing, the written consent for special education and related services at any time.
- 1) When a written revocation of consent is received from a parent, the ES or CST Case Manager shall, within 20 days of receipt of the parent's written revocation of consent, provide written notice to the parent stating that consent has been revoked and that the student is now a general education student.
 - a) If the OOE/ES/CST Case Manager chooses to conduct a meeting to discuss the revocation of consent with the parent(s), the meeting shall be within the 20-day time period to respond to the written revocation of consent, and notice shall be sent by the 20th day, utilizing the appropriate letter in the SEP/CST Manual.
 - b) If the OOE/ES/CST Case Manager does not choose to conduct a meeting to discuss the revocation of consent with the parent, the written notice shall be provided to the parent(s) by the 20th day, utilizing the appropriate letter in the SEP/CST Manual.
- 2) Once written notice is sent, the parent shall have 15 days to consider the written notice and withdraw the written revocation of consent if the parent determines to do so.
 - a) After the 15-day time period, the student shall be considered a general education student for all purposes, including disciplinary matters, from that date forward.
 - b) After the 15-day time period, the parent cannot reverse the revocation by rescinding the revocation of consent.

- 3) If the parent later requests to have the child reinstated as a student with a disability, the request shall be treated as a written referral for evaluation for eligibility pursuant to OOE Policy #23, "Identification, Location, and Referral for Evaluation of Students Who May Have a Disability".
 - a) Special education and related services may not be immediately reinstated.
 - b) Rather, an initial evaluation of the student shall be completed and, if determined eligible, an IEP shall be developed for the student, prior to reinstituting special education and related services for the student.
- 4) Parents may not utilize this revocation of consent procedure to declassify a student, as to do so would constitute a violation of applicable state and federal special education laws and regulations. Declassification shall only be effectuated through a reevaluation pursuant to N.J.A.C. 6A:14-3.8.
- 5) Revocation of consent shall not be retroactive, and such revocation shall not negate any action that occurred after consent was provided and before consent was revoked.
- 6) Revocation of consent may not be challenged through the mediation and due process hearing procedures.

5. Written Notice

- a. Written notice which meets the requirements of N.J.A.C. 6A:14-2.3 and this policy shall be provided to the parent whenever designated school and/or CST personnel propose or decline to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.
- b. Written notice shall be in language understandable to the general public and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4.
- c. Written notice shall include:
 - 1) A description of the action proposed or denied by designated school and/or CST personnel;
 - 2) An explanation of why the actions are being taken;
 - 3) A description of any options the designated school and/or CST personnel considered and the reasons why those options were rejected;

- 4) A description of the procedures, tests, records or reports and factors used by the designated school and/or CST personnel in determining whether to propose or deny an action;
 - 5) A description of any other factors that are relevant to the proposal or refusal by the designated school and/or CST personnel; and
 - 6) A statement that the adult student or the parents of a student with a disability have protection under the procedural safeguards of N.J.A.C. 6A:14-2, the means by which a copy of a description of the procedural safeguards can be obtained and sources for parents to contact to obtain assistance in understanding the provisions of this chapter.
 - 7) In addition, a copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents shall be provided only one time per year, except that a copy shall also be provided:
 - a) upon referral for an initial evaluation;
 - b) upon request by a parent; and
 - c) when a request for a due process hearing is submitted to the Department of Education.
- d. Written notice shall be provided to the parent as follows:
- 1) The ES or CST Case Manager shall provide written notice no later than 15 calendar days after making a determination.
- a) In order to meet this 15-day requirement, the correspondence and any accompanying documents shall be forwarded in accordance with the SEP/CST Manual.
- 2) The ES or CST Case Manager shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal.
 - a) The proposed action may be implemented sooner if the parent agrees in writing.
 - b) In order to meet this 15 day requirement, the correspondence and any accompanying documents shall be forwarded in accordance with the SEP/CST Manual.

- 3) The DCF or DHS State facility education program shall implement the proposed action after the parent has had the opportunity to review the written proposal for 15 calendar days unless:
 - a) The parent disagrees with the proposed action and the DCF or DHS education program takes action in an attempt to resolve the disagreement; or
 - b) The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the parent's review period of 15 calendar days shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d) 10 or 2.7 (u).
- 4) The ES or designee may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team and other appropriate personnel of the student's education program and/or the OOE determines that disciplinary action requires immediate implementation. Such written notice shall be provided according to the following:
 - a) The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements of written notice according to N.J.A.C. 6A:14-2.3(g). Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.
 - b) While mediation or due process related to the disciplinary action is pending, the student shall continue to be entitled to receive educational services.
- 5) When the OOE/ES/CST Case Manager receives a written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice pursuant to section D.5.c. of this policy shall be provided to the parent within 20 calendar days, excluding holidays.
 - a) When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted and a determination shall be made within 20 calendar days, excluding holidays.
 - b) Written notice of the determination shall be provided within 15 calendar days of the meeting.

- e. When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required pursuant to section D.5.c. of this policy, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14) and due process hearing rules (N.J.A.C. 1:6A).

6. Parental Participation in Meetings

- a. The ES or CST Case Manager shall ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of the student or the provision of a free, appropriate public education to the student.
- b. Meetings to determine eligibility and develop an IEP shall, if feasible, be combined as long as the requirements for notice of a meeting and the following conditions are met:
 - 1) Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:
 - a) the parent;
 - b) a teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;
 - c) the student, where appropriate;
 - d) at least one child study team member who participated in the evaluation;
 - e) the case manager;
 - f) other appropriate individuals at the discretion of the parent or the responsible education program; and
 - g) for an initial eligibility meeting, certified school personnel referring the student as potentially having a disability, or the ES or designee if they choose to participate.
 - 2) Meetings of the IEP team shall include the following participants:
 - a) the parent;
 - b) not less than one general education teacher of the student, if the student is or may be participating in the general education classroom;

- i) If the student has no general education teacher, a general education teacher who is knowledgeable about the school's programs shall participate;
 - ii) The general education teacher as a member of the IEP team must to the extent appropriate, participate in the development, review and revision of the student's IEP;
 - iii) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
 - iv) The general education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student.
- c) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
 - i) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the school's programs shall participate;
- d) at least one child study team member who can interpret the instructional implications of evaluation results;
- e) the case manager;
- f) a representative of the responsible education program who:
 - i) is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - ii) is knowledgeable about the general education curriculum;
 - iii) is knowledgeable about the availability of resources of the education program/OOE; and
 - iv) shall be the child study team member or other appropriate school personnel such as the ES or Regional Administrator;
- g) at the discretion of the parent or the responsible education program, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
 - i) The determination of the special knowledge or expertise shall be made by the party (parent or education program) who invited the individual;
- h) the student, where appropriate;
- i) at the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and

- j) if a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.
 - k) For students with disabilities who are potentially eligible to receive services from the Division of Developmental Disabilities in the Department of Human Services, the ES or CST Case Manager shall provide the necessary materials to the parent to apply for such services.
- c. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.
- d. Meetings shall be scheduled at a mutually agreed upon time and place. If a mutually agreeable time and place cannot be determined, the parent shall be provided the opportunity to participate in the meeting through alternative means, such as videoconferencing and conference calls.
- e. Notice of meetings shall indicate the purpose, time, location and participants.
 - 1) The notice of an IEP meeting shall inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise.
 - 2) When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services, the notice of the IEP meeting shall indicate that:
 - a) A purpose of the meeting will be the development of transition services for the student; and
 - b) The school district will invite the student.
 - 3) When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:
 - a) Indicate that a purpose of the meeting is the consideration of transition services for the student;
 - b) Indicate that the school will invite the student; and
 - c) Identify any other agency that will be invited to send a representative.

- f. If the parent cannot attend the meeting(s), the ES and/or the CST Case Manager shall attempt to ensure parental participation.
 - 1) Parental participation may include the use of electronic conference equipment to conduct a videoconference or conference call.
- g. A meeting may be conducted without the parent in attendance if the ES and/or CST Case Manager can document that he/she has been unable to secure the participation of the parent. The school shall maintain a record of its attempts to arrange the meeting, including but not limited to:
 - 1) Detailed records of telephone calls made or attempted and the results of those calls;
 - 2) Copies of correspondence, including electronic communications such as e-mail, sent to the parents and any responses received; and
 - 3) Detailed records of visits made to the parent's home or place of employment, as feasible, and the results of those visits.
- h. Participants at the IEP meeting shall be allowed to use an audiotape recorder during the meeting provided notice is given to the other participants prior to the start of the meeting that such a device is being used.
- i. For a member of the IEP team whose area of the curriculum or related services is not being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and the education program agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
 - 1) All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.
- j. For a member of the IEP team whose area of the curriculum or related services is being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and the education program agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
 - 1) If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.

- 2) All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request;
- k. The following activities shall not be considered a meeting that requires parental participation:
 - 1) Informal or unscheduled conversations involving school and/or CST personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; and
 - 2) Preparatory activities that school and/or CST personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

7. Native Language

- a. Parent conferences required by N.J.A.C. 6A:14 shall be conducted and written notice to the parent shall be provided in the language used for communication by the parent and student unless it is clearly not feasible to do so.
- 1) Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the OOE at no cost to the parent.
- b. If the native language is not a written language, the ES or CST Case Manager shall take steps, which are documented in writing, to ensure that:
 - 1) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication; and
 - 2) The parent understands the content of the notice.

Debra Stewart
Director

<p>Note: This is a reproduction of a signed document. The original document is on file with the DCF Office of Education.</p>
